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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 918

HARRY WEINSTEIN,

Petitioner,

vs.

THE STATE OF NORTH CAROLINA

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA AND BRIEF IN SUPPORT THEREOF.

THOS. W. RUFFIN,
Counsel for Petitioner.

INDEX

Subject Index

	Page
Petition for writ of certiorari	1
Summary	1
Constitutional queston involved	2
a. Due process clause	2
Jurisdiction	6
Prayer	7
Brief in support of petition	8
a. Jurisdiction	8
1. No crime was committed as charged in the bill of indictment	8
2. The petitioner was convicted and sentenced on totally insufficient evidence.	10

Table of Cases Cited

Creswill v. *Grand Lodge of K. of P.*, 225 U. S. 246	11
Jonge v. *Oregon*, 299 U. S. 353-66	10
Kaukauna Water Power Co. v. *Green Bay & M. Canal Co.*, 142 U. S. 254	11
State v. *Cannon*, 218 N. C. 466	13
State v. *King*, 222 N. C. 239	12, 13
State v. *Weinstein*, 224 N. C. 645	9
Thomas v. *Houston*, 181 N. C. 91	10
Thornhill v. *Alabama*, 310 U. S. 88-106	10
Truax v. *Corrigan*, 257 U. S. 312	11

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MAY IT PLEASE THE COURT:

Summary

Your petitioner, Harry Weinstein, petitions this Honorable Court for a writ of certiorari to issue to the Supreme Court of North Carolina, and would respectfully show:

That your petitioner was indicted in the Superior Court of Wake County, North Carolina, under a bill of indictment as appears in the record (R. 2) charging the crime of larceny of waste paper of the value of more than Fifty Dollars ($50.00), and second, the crime of receiving said stolen paper, knowing it to have been stolen, also of the value of more than Fifty Dollars ($50.00), both felonies under the laws of North Carolina. That your petitioner

was tried at the April Term, 1944, of the Wake County, North Carolina, Superior Court and convicted on both counts. That the petitioner was thereupon sentenced by the Court to serve not less than three nor more than five years in the State's Prison (R. 6). Your petitioner appealed to the North Carolina Supreme Court, which Court affirmed the judgment of the Superior Court.

Federal Question Involved

It is the contention of the petitioner that he has been convicted and sentenced to prison for a crime that in fact was not committed and on insufficient evidence and that the judgment of the State Court accordingly has deprived him of his liberty without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States which briefly provides: "Nor shall any State deprive any person of life, liberty, or property without due process of law." Your petitioner accordingly deems it essential and necessary to briefly state the evidence by which he was convicted.

The evidence discloses that the Junior Chamber of Commerce, a public organization of Raleigh, scheduled a scrap paper drive for the purpose of collecting waste paper, for Sunday, February 20, 1944. The drive was much advertised in newspapers and by radio. The citizens of Raleigh were asked to collect their waste paper in bundles and place it in front of their houses not later than 1:00 p. m., Sunday, for the purpose of having the paper collected by the City Sanitary trucks, the City having agreed to collect the paper for the Junior Chamber of Commerce. It rained Sunday morning and the Junior Chamber of Commerce decided at the last minute to call off the drive. The collection of paper was scheduled to begin at 1:00 p. m. and end at 5:00 p. m. No notice of the postponement of the drive

to the following Monday at 1:00 p. m. was given except by spot flashes or intermittent announcements of the postponement of the drive until Monday over the two radio stations in the City of Raleigh. There is no evidence whatever that the defendant, Weinstein, heard of the postponement of the drive. That State's witness, G. A. Moore, testified (R. 17), "I don't know of my own personal knowledge that Mr. Weinstein ever got any notice of the flash over the radio. It was in the paper Monday morning; it wasn't there Sunday."

The defendant, Harry Weinstein, is a duly licensed junk dealer and has been engaged in the collection of scrap paper at all times for years before this particular drive scheduled for Sunday, February 20, 1944. The State's witness, G. A. Moore, testified (R. 8) that he had asked the local scrap dealers in Raleigh to give him prices on scrap paper and that Weinstein gave him a price of $9.00 per ton. On cross-examination this same witness testified (R. 17), "I know Mr. Weinstein collects scrap paper, etc. He is in that regular business." And again (R. 18), "I think to my knowledge Mr. Weinstein has been in the scrap paper and junk business at least five or six years." It also appears from the evidence that the defendant, Weinstein, owned four trucks and that he had four negro drivers operating the trucks and collecting scrap paper on a commission basis. The negroes were paid so much per ton or pound for the paper and were allowed to collect paper when and where they pleased (see evidence of Deputy Sheriff C. L. Haynes, R. 26). Mr. Haynes testified that at the request of Mr. G. A. Moore, Jr., President of the Junior Chamber of Commerce, he telephoned the defendant, Weinstein, on Monday about 10:00 a. m. and told him that it was reported that he was collecting this paper that was put out for the Junior Chamber of Commerce drive and that Weinstein said that he was not. He

also said that the orange truck that was accused of collecting some of the paper Monday morning was not his. He said he did not know where his negro drivers got the paper. He said he did not know anything about the negroes getting the paper that might have belonged to the Junior Chamber of Commerce.

The State's witness, G. A. Moore, was allowed to testify over the objection of the defendant (R. 9, 10, 11 and 12) that he rode over the greater part of the Hayes Barton section of the city, down St. Mary's Street and most of the area from St. Mary's Street to Glenwood Avenue and down Hillsboro Street as far as State College; also over Blount Street and Person Street and then back through Peace Street into St. Mary's Street. This was on Sunday afternoon. The witness was allowed, over the objection of the defendant, to testify that on Sunday afternoon he saw between 60,000 and 75,000 pounds of paper put out on the curb and then the witness was allowed to testify over the objection of the defendant, that the paper that he saw on Sunday afternoon was not there on Monday morning. And the witness was further allowed to testify, over the objection of the defendant, that in his opinion between 40,000 and 50,000 pounds of paper was missing Monday morning. On cross-examination (R. 17) this witness testified: "We charge him (the defendant) with every bundle of paper that I saw in Hayes Barton on Sunday afternoon that I didn't see Monday morning." The Court's attention is called to the fact that there is not a scintilla of evidence to the effect that Weinstein's trucks or drivers were seen collecting any paper in the Hayes Barton area described by the witness, Moore, between the time of his first inspection on Sunday afternoon and his second inspection on Monday morning. And also there is no evidence whatever that the defendant aided or abetted or advised or procured the negro truck drivers to collect

this paper. The truck drivers were in Court as State's witnesses but were not called upon to testify or tendered for examination by counsel for defendant.

This same witness, G. A. Moore, testified (R. 14 and 15) that on Monday he went out to Weinstein's warehouse and place of business in the Caraleigh section and looked at paper in the warehouse. Over the defendant's objection, the witness, Moore, was allowed to testify that in his opinion 1,000 pounds of bundled paper was in the warehouse. The State's witness, Officer Maddry, over the objection of the defendant, was allowed to testify (R. 33) as to how many bales of paper there were in the warehouse.

State's witness, Officer Gay, over the defendant's objection, was allowed to testify (R. 45 and 46) that he inspected the defendant's warehouse and that in his opinion there was 15,000 pounds of paper in the warehouse and then testified that he didn't have the slightest idea where all the paper came from.

There was other evidence that the witness, Moore, in company with police officers of the City of Raleigh, went out to the defendant's place of business in Caraleigh on Monday morning after the State's witness, G. A. Moore, had telephoned the defendant, Weinstein, and told him that one of his trucks was picking up paper on White Oak Road, all of which was denied by the defendant (R. 12). And Police Officer Maddry told Weinstein that he understood that some of his trucks were collecting Junior Chamber of Commerce paper and that Weinstein replied that he did not know where the trucks were or whether they were collecting the paper or not. That these same witnesses went back to Weinstein's place of business later and that Weinstein told them that one truck had come in and exhibited to them a receipt for 1,300 pounds of paper taken from the negro driver. That they asked to see where the truck was unloaded and that Weinstein gave

them wrong directions, according to their statement, but later carried them to the place where the paper was unloaded and also showed them over his warehouse.

The State's witness, D. A. Gay, police Officer of the City of Raleigh, testified (R. 43) that about ten o'clock Monday morning he found a red truck broken down between Blount and Person Streets with 1,600 pounds of paper loaded on it and further testified that he took some magazines off of that truck, which had been identified by other witnesses as magazines which they had placed out for the scrap drive. This same witness later testified (R. 43) that the owner of the red truck was Harry Weinstein, the defendant. This same witness, in his first statement (R. 41) testified that the driver of the truck was a colored man named Albert Williams. Albert Williams was in the courtroom. The State did not offer his evidence. The Court's attention is called to the fact that this load of paper was never received by the defendant but confiscated by the police.

Jurisdiction

This Court has jurisdiction to review the opinion of the Supreme Court of North Carolina for the reason that it involves a federal question, to wit:

1. The petitioner contends that he has been convicted of two crimes, amounting to felonies, which crimes were not in fact committed, and sentenced to prison by the Courts of North Carolina, all on insufficient evidence in contravention of the Fourteenth Amendment of the Constitution of the United States, providing in effect that no person shall be deprived of his liberty, etc., without due process of law.

The foregoing proposition of law was duly presented to the Superior Court and also the North Carolina Supreme Court by motions for judgment as of non-suit (R. 81)

but denied in both the Superior Court and on appeal in the Supreme Court. It is not open to your petitioner to file a petition to rehear in the North Carolina Supreme Court. (See Clerk's Certificate, Record page 96.)

WHEREFORE, it is respectfully prayed that this petition for a writ of certiorari be allowed and that the writ be granted to review the judgment and opinion of the Supreme Court of North Carolina; and your petitioner will ever pray.

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Attorney for Petitioner,
Harry Weinstein.